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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/777,775	02/12/2004	Jorg Nonnenmacher	3376/38A	2948

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DOCKET ADMINISTRATOR
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EXAMINER

HALIM, SAHERA

ART UNIT	PAPER NUMBER
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2157

MAIL DATE	DELIVERY MODE
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08/10/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

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Office Action Summary

Application No.

10/777,775

Applicant(s)

NONNENMACHER, JORG

Examiner

Sahera Halim

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 May 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This Office Action is responsive to Amendment filled on May 16, 2007.
2. Claims 2-11 have been added.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claim 10 recites the limitation "the method of claim 10" in line 1 of the claim.

There is insufficient antecedent basis for this limitation in the claim. The claim depends on itself. For examination purposes it is read as "the method of claim 8".

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

6. Claims 1-11 are rejected under 35 U.S.C. 102(e) as being anticipated by Killian, U.S. Pat. No. 6,438,592 (hereinafter Killian).

7. Regarding claim 1, Killian teaches a method for measuring quality of service over a network, the method comprising (abstract):

transmitting from a server (server which receives URL requests) to a client a mobile program (performance monitoring instructions) and a plurality of first identifiers (the server identifies the target hosts when it receives URL requests) representing a plurality of first target hosts accessible to the client over the network, the first target hosts being independent of the server and (see col. 19, lines 14 - 55) the mobile code being executable in a client application and capable of measuring one or more quality of service parameters of the network for communications between the client and each of the first target hosts (abstract, col. 3, line 20-45 and col. 4, line 58-62, the performance monitoring instructions cause the client computer to send to the server performance messages indicating the length of time required on the client for performing an act associated with the transmitted objects); and

receiving at the server from the mobile program data representing a plurality of quality of service parameters measured by the mobile program from communications between the client and the first target hosts (abstract and col. 3, line 20-45; the server receives performance information and problems from the client).

8. Regarding claim 2, Killian teaches the method of claim 1, comprising transmitting from the server to the client a plurality of second identifiers representing a plurality of second target hosts accessible to the client over the network (see col. 3, lines 24-34 and col. 4, line 8-20).

9. Regarding claim 3, Killian teaches the method of claim 2, comprising selecting the second target hosts based upon the quality of service parameters measured by the mobile program from communications between the client and the first target hosts (col. 3, lines 34 - 64 and col. 5, lines 3 - 35).

10. Regarding claim 4, Killian teaches the method of claim 1, wherein the mobile program comprises an applet executable within a web browser residing on the client (col. 10, line 50-65).

11. Regarding claim 5, Killian teaches the method of claim 1, wherein the first identifiers comprise uniform resource locators (see col. 11, lines 7 - 47 and col. 13, lines 8 - 30).

12. Regarding claim 6, Killian teaches the method of claim 1, wherein the quality of service parameters measured by the mobile program include a round-trip time between the client and each of the first target hosts (col. 11, line 32 - 53 and col. 10, line 26 - 65).

13. Regarding claim 7, Killian teaches the method of claim 1, wherein the step of transmitting the mobile program and plurality of first identifiers comprises:
transmitting the mobile program to the client; receiving a request from the mobile

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program for identifiers (col. 17, line 1 – 48); and transmitting the first identifiers to the client in response to the request from the mobile program (col. 8, line 7 – 32).

Regarding claims 8 – 11, claims 8-11 have similar limitations as to claims 1 – 7 and do not further limit the invention, therefore, they are rejected under the same rational.

Response to Arguments

14. Applicant's arguments with respect to claim 1 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

15. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sahera Halim whose telephone number is (571) 272-4003. The examiner can normally be reached on Mondays and Thursdays from 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ario Etienne can be reached on (571) 272-4001. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Sahera Halim
Patent Examiner

August 4, 2007


ARIO ETIENNE
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER